

## Office of the Secretary of Labor

## § 9.11

### **§ 9.9 In what manner must the successor contractor offer employment?**

(a) Except as provided in § 9.7 and 9.8 of this part, a successor contractor must make a bona-fide express offer of employment to each of the predecessor contractor's employees before offering employment on the contract to any other person. The successor contractor must offer employment to each employee, either individually in writing or orally at a meeting attended by a group of the predecessor contractor's employees. In order to ensure that the offer is effectively communicated, the successor contractor should take reasonable efforts to make the offer in a language that each worker understands, for example, by having a co-worker or other person fluent in the worker's language at the meeting to translate or otherwise assist an employee who is not fluent in English.

(b) For a period of one year, the contractor must maintain copies of any written offers of employment or a contemporaneous written record of any oral offers of employment, including the date, location and attendance roster of any employee meeting(s) at which the offers were extended, a summary of each meeting and a copy of any written notice which may have been distributed, and the names of the predecessor contractor's employees to whom an offer was made. The contractor must provide copies of such documentation upon request of any authorized representative of the contracting agency or Department of Labor.

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(c) The contractor shall state the time within which an employee must accept an employment offer, but in no case may the period in which the employee has to accept the offer be less than 10 days.

(d) The successor contractor's obligation to offer a right of first refusal exists even if the successor contractor has not been provided a list of the predecessor contractor's employees, or the list does not contain the names of all persons employed during the final month of contract performance.

### **§ 9.10 What constitutes a bona fide offer of employment?**

(a) As a general matter, an offer of employment will be presumed to be a bona fide offer of employment. An offer of employment need not be to a position similar to that which the employee previously held, but the employee must be qualified for the position. Information regarding an employee's qualifications shall ordinarily come directly from the employee. If a question arises concerning an employee's qualifications, that question shall be decided based upon the employee's education and employment history with particular emphasis on the employee's experience on the predecessor contract.

(b) An offer of employment to a position providing lower pay or benefits than the employee held with the predecessor contractor will be considered bona fide if the contractor shows valid business reasons (not related to a desire that the employee refuse the offer, or that other employees be hired). Where the timing of an employee's termination suggests that the offer of employment may not have been bona fide, the facts and circumstances of the offer and the termination will be closely examined to be sure the offer was bona fide.

### **§ 9.11 What are the obligations of the predecessor contractor?**

(a) Not less than 60 days before completion of its contract, the predecessor contractor must furnish the contracting officer with a certified list of the names of all service employees working for the contractor at the Federal facility at the time the list is submitted, together with their anniversary dates of employment. The contracting officer in turn shall provide the list to the successor contractor and, if requested, to employees of the predecessor contractor or their representatives.

(b) Unless the predecessor contractor (either directly or through the contracting agency) or the individual employee in question provides evidence to the contrary, the successor contractor must presume that *all* service employees of the predecessor contractor who